

H. TIM HOFFMAN, SB#049141
ARTHUR W. LAZEAR, SB#083603
HOFFMAN & LAZEAR
Attorneys at Law
180 Grand Avenue, Suite 1550
Oakland, California 94612
Telephone: (510) 763-5700

MARK R. THIERMAN CSB 72913, NSB 8285
THIERMAN LAW FIRM
7287 Lakeside Drive
Reno, NV 89511
Tel: (775)284-1500 Fax (775)703-5027

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ROBERT MCCAFFREY a/k/a BROKE BECK, et al, on behalf of themselves, the general public and all others similarly situated,

Plaintiffs,

v.

BROBECK, PHEGLER & HARRISON,
LLP AND MORGAN, LEWIS &
BOCKIUS LLP and DOES 1- 99

Case No.: C03-2082-CW

**DECLARATION OF H. TIM HOFFMAN
IN SUPPORT OF MOTION TO COMPEL
RESPONSES TO REQUESTS FOR
PRODUCTION OF DOCUMENTS AND
QUESTIONS AT DEPOSITION**

Date:
Time:
Courtroom:
Before the Honorable Claudia Wilken
Trial Date:

I, H. TIM HOFFMAN, hereby declare:

1. I am one of the attorneys of record for Plaintiffs ROBERT MCCAFFREY a/k/a BROKE BECK et al. (“Plaintiffs”). I am providing the following information in support of Plaintiffs’

Dec. of H. Tim Hoffman in Supp. of Motion to Compel Responses
to Requests for Prod. of Docs. and Questions at Depo C03-2082-CW

1 motion for an order compelling responses to requests for production of documents and questions at
2 depositions. I have personal knowledge of the following information and could competently testify
3 thereon.
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5 2. During the months of November and December 2004, I noticed, on behalf of Plaintiffs, the
6 depositions of several attorneys currently employed by defendant MORGAN, LEWIS & BOCKIUS
7 LLP ("Defendant" or "Morgan Lewis"). Several of these individuals had previously been employed by
8 BROBECK, PHEGLER & HARRISON, LLP ("Brobeck"). Along with the notices of deposition, I
9 requested that the deponents produce a variety of documents concerning, *inter alia*, the proposed
10 merger of Brobeck and Morgan Lewis, the failure of merger negotiations, the dissolution of Brobeck,
11 and the relationship between Morgan Lewis and Brobeck's former partners.
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13

14 3. Defendant responded with a series of objections to the request for documents. Attached
15 hereto as Exhibit 1 are true and correct copies of the responses by Defendant to the deposition notices
16 and document requests for deponents Howard Holderness, Thomas Sharbaugh, Ralph Savarese,
17 Richard Odom, Richard Moskowitz, Jami Wintz McKeon, and Cecily Waterman. The responses
18 include the text of the requests to which the responses are addressed.
19
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21 4. On or about December 20, 2004, I sent a letter to Jiyun Lee, counsel for Morgan Lewis, in
22 an effort to confer over the objections raised by Defendant to document requests addressed to Howard
23 Holderness. (A true and correct copy of that letter is attached hereto as Exhibit 2.) These
24 considerations are virtually identical to those applicable to the requests of, and responses on behalf of,
25 the other deponents. Defendant responded to my letter in a letter dated January 10, 2005, a copy of
26
27

1 which is attached hereto as Exhibit 3.

2 5. In connection with the depositions of Messrs. Odom, Savarese and Moskowitz, Defendant
3 withheld numerous documents on the asserted grounds of relevance and attorney-client privilege.
4
5 Documents that were produced were very heavily redacted. Of a set of 358 pages of notes
6 produced by Mr. Odom, for example, 238 pages were at least partially redacted, and 92 pages were
7 produced with virtually the entire text redacted. (A sample of the redacted notes is attached hereto as
8 Exhibit 4. In order to avoid burdening the record, I am not attaching copies of the entire set of notes
9 that were produced, but will make those available to the Court if it wishes to review them.)

10 6. For most of the items as to which Defendant asserted a claim of privilege, it produced either
11 no privilege logs or logs containing insufficient information to determine the legitimacy of the claim of
12 privilege.
13

14 7. On or about January 14, 2005, I sent a letter to Ms. Lee protesting the withholding and
15 redacting of documents. A true and correct copy of that letter is attached hereto as Exhibit 5. Ms. Lee
16 responded to my letter in a letter dated January 20, 2005, a copy of which is attached hereto as Exhibit
17 6.

18 8. In addition to the discussions in our letters, Ms. Lee and I conferred frequently during the
19 depositions over my belief that Defendant had not responded fully to Plaintiffs's discovery requests, as
20 set forth in the present motion.

21 9. At the deposition of Homiyar Wachtah, Mr. Wachtah testified that the Brobeck computer
22 system was active and present in the offices of Morgan Lewis, and accessible by former Brobeck
23

1 attorneys, following Morgan Lewis' moving into the San Francisco offices formerly occupied by
2 Brobeck. A copy of the relevant pages of his deposition are attached hereto as Exhibit 7.
3

4 10. At the deposition of Howard Holderness, Mr. Holderness testified that e-mails and other
5 files formerly maintained in Outlook Express files on Brobeck's computer had been converted to Lotus
6 Notes files accessible by Morgan Lewis on its computer. A copy of the relevant pages of his
7 deposition are attached hereto as Exhibit 8.
8

9 11. It does not appear that all of the e-mails and other files formerly maintained on Brobeck's
10 computers were produced in response to applicable requests that Plaintiffs made of Defendant and its
11 witnesses.
12

13 12. Of the documents produced by Defendant, I would estimate that 80 - 90% have been
14 marked by Defendant either as "confidential" or "attorneys eyes only" under the protective order in this
15 action.
16

17 13. In connection with the document requests addressed to Mr. Moskowitz, Defendant
18 produced what purports to be a "privilege log" and a "redaction log." Copies of these logs are
19 attached hereto as Exhibit 9.
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I declare under penalty of perjury that the foregoing is true and correct.
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Executed this 31st day of January 2005, at Oakland, California.
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23 H. TIM HOFFMAN
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Dec. of H. Tim Hoffman in Supp. of Motion to Compel Responses
to Requests for Prod. of Docs. and Questions at Depo C03-2082-CW

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